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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,093	02/02/2004	Philip J. Simpson	029011/0308042	2037

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EXAMINER

ANDERSON, GREGORY A

ART UNIT	PAPER NUMBER
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3773

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/771,093	Applicant(s) SIMPSON ET AL.	
	Examiner GREGORY A. ANDERSON	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,7-9,11,14-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8,11,15-25 and 27-29 is/are rejected.
- 7) ☒ Claim(s) 7,9 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 5, 8, 11, 15-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert et al. 3,605,837 in view of Miller et al. 3,797,343.

Lambert et al. discloses a system comprising: a bearing block 202, a first cutting element 14, the first cutting element being an eccentric disc (Fig. 2) rotatably connected to the bearing block by an axle 26, wherein the first cutting element is configured to rotate eccentrically, and a drive mechanism (Fig. 1) operatively connected to the first cutting element for providing torque about the axle of the first cutting element. Lambert et al. further discloses the first cutting element being adapted for cutting tissue or man-made materials (Col. 3 ll. 36-41). Lambert further discloses the drive mechanism including a bevel gear 62 assembly, a crank 222 assembly, pinion assembly (Col. 7 ll. 15-21), and a pulley assembly 72. Lambert et al. further discloses the disc being eccentrically mounted on the axle (Fig. 1). Lambert et al. further discloses the disc being elliptical (Fig. 2).

However, Lambert et al. does not disclose a housing with the drive mechanism at least partly within the housing and the cutting element, axle, and bearing block being

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configured such that a cutting edge of the disc is exposed beyond the end of the bearing block distal to the housing for only a part of the eccentric rotation.

Miller et al. discloses a housing in the form of safety cover 181, with a drive mechanism within the housing and the cutting element only partially exposed during the cutting operation (Fig. 1). The housing of Miller et al. is roughly cylindrical (Fig. 1). The housing of Miller et al. is further capable of being used as a hand piece. Miller et al. further discloses a second cutting element 81. Miller et al. further discloses a direct motor drive and hydraulic means within the drive mechanism (Col. 5 ll. 40-55). Miller et al. further discloses the disc being circular (Fig. 15).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Lambert et al. to include the housing of Miller et al. to facilitate the safe operation of the device.

Lambert et al. in view of Miller et al. further does not disclose the drive mechanism including pneumatic means.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Lambert et al. in view of Miller et al. by substituting the hydraulic means of Miller et al. with pneumatic means since it has been held that substituting a device known to be an equivalent structure is unpatentable.

Regarding claims 23-25: Since the eccentricity of the cutting element is based on either the shape of the cutting element or where the axis of rotation is mounted on a circular blade, it is an inherent property of the cutting element to provide a variable

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depth of cut, ramp angle, and rate of cut as the cutting element rotates through 360 degrees.

Allowable Subject Matter

3. Claims 7, 9, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter: The devices of Lambert et al. and Miller et al. are used for slicing meat or other products into same depth slices over multiple cuts. Neither the device of Lambert et al. nor of Miller et al. is capable of being used as a blunt force dissector or a tissue probe, and there would be no obvious reason to include electrocautery on either device. Further, neither the prior art of record nor the prior art at large can cure the deficiencies of Lambert et al. and Miller et al. alone or in combination.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 4, 5, 7-9, 11, 14-25, and 27-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY A. ANDERSON whose telephone number is (571)270-3083. The examiner can normally be reached on Mon-Thurs 9:30am-3:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A Anderson/

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773